IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 12 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
DR.SHAILESH C. PATEL - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mrs. Mona Bhatt, learned counsel for the Revenue applicant. Mr. B.D. Karia, learned counsel for the assessee.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench 'C', has referred the following question, at the instance of the Revenue, for opinion of this Court in I.T. Appeal No. 3445 & 3446/Ahd/1991 relating to Assessment Year 1986-87 and 1987-88;

> 'Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the assessee engaged in a profession of pathological laboratory could be said to be said to be carrying on a business as an industrial undertaking which produced an article or thing and was thus entitled to investment allowance u/s. 32-A of the Act on the new machinery installed in his clinic ?'

3. Undisputedly, the assessee is a Pathologist and runs his Pathological Laboratory in Baroda under the name of Alakh Laboratory. He had purchased machinery worth Rs. 2,88,696/- and claimed investment allowance of Rs. 98,498/-. The claim was disallowed by the Assessing Officer but however in a final appeal before the Tribunal the investment allowance was granted in favour of the assessee.

4. In Income Tax Reference No. 237 of 1995, answering an identical question, we have held that if plant and machinery are purchased for use in a Pathological Laboratory, then the

assessee would be entitled to investment allowance. In view of the said Judgment dated 1.8.2006 in Income Tax Reference No. 237 of 1995 between Commissioner of Income Tax Vs. Suresh Amin Family Trust, we decide the Reference against the interests of the Revenue. The matter stands disposed of.

[R.S. Garg, J.]

rmr. [M.R. Shah, J.]